VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS.

Our New Associate Editors.

As will be noted the Associate Editors of the REGISTER are changed with this number. As fast as our Associate Editors get into harness the lure of the great city seems to call them away, and for the second time New York has deprived us of one of our Associate Editors, Mr. Minor Bronaugh. Mr. Richey, owing to the press of other duties, has resigned, and Messrs. T. B. Benson and L. B. Waters are henceforth the Associate Editors of the REGISTER. Whilst we regret losing the valuable services of Mr. Richey and Mr. Bronaugh we are confident that the REGISTER will be carried on to a higher degree of usefulness in the future. Several important changes are in contemplation to make the REGISTER of greater usefulness to the profession. The annotation of cases will be carried to a greater extent than heretofore, after this number, and it is our earnest hope that the profession will give the REGISTER the benefit of their views upon the important legal questions that are arising every day in this State. Without the cooperation of the Bar the success of a legal periodical is almost impossible and we must look to the members of the Bar who are interested in legal questions to give us the benefit of their knowledge, and the REGISTER at all times puts its pages at their disposal for any questions they may desire to ask or problems which they may wish solved.

Abatement of Nuisances by the Court—Error.

We regret to say that through the fault of the Editor-in-Chief the section in regard to Abatement of Public Nuisances was in our December number three times quoted as § 3814a. It should, of course, have been 1729a and we will be glad if our readers will turn to

the editorials on pages 943 and 944 and wherever § 3814a occurs change it to § 1729a.

We are not altogether responsible, however, for this error. The editorial in question was written in our private library at home and we were using Hearst's Pocket Code, in which this Section was given as 3814a, Mr. Hearst having put t where it properly belonged, after 3814, but its number in Polla'd's Code is 1729a. Following the number in Hearst's Code we fell into the error, and therefore we would advise those who have Hearst's Code—and we certainly would not be without it for a good deal—to note on the margin of § 3814a that in Pollard's Code it is 1729a.

The New Tax Laws in Virginia.

The new laws segregating property tor the purposes of taxation are now in effect and the practical result of their operation will be watched with deep interest. At the request of many of the profession we give a brief resume of them. We have no doubt the constitutionality of these measures will have to run the gauntlet of the courts and whether they will be held to come within the purview of § 169 of the Constitution is a question upon which we express no opinion. That section reads, that the Legislature may segregate for purposes of taxation "the several kinds or classes of property, so as to specify and determine upon what subjects, State taxes and upon what subjects local taxes may be levied."

For purposes of STATE taxation the following property is set apart:

1. All insurance taxes and licenses to insurance companies.
2. All taxable intangible personal property.
3. All rolling stock of corporations operating railroads by steam.
4. All other classes of property not hereinbefore specifically enumerated in the Act.

But *cities* may levy a tax upon the segregated intangible personal property assessed to residents therein at the rate of thirty cents in the $100 of assessed value thereof, and the board of supervisors of any county may levy a similar tax (*but only for* DIS-

TRICT *road purposes*) on all such intangible personal property assessed to residents of any magisterial district to be used *exclusively* for construction and repair of roads located within the district in which such levy is made.

Why this distinction is made it is hard to say: Cities can use this thirty cents in the $100 for any purpose; counties can only use it for the magisterial district in which it is laid. Incorporated towns maintaining their own roads are exempted from this levy for road tax, but are allowed to lay a similar tax on such property and such towns can use this thirty cents for any *purpose*. The counties are tied down, but not the cities or towns.

For purposes of LOCAL taxation, i. e. counties and cities, the following property is segregated:

1. All taxable real estate.
2. All taxable tangible property.
3. All tangible personal property of public service corporations (except rolling stock of railroads operated by steam).
4. All capital of merchants.
5. Shares of stocks in banks, banking associations and other institutions enumerated in § 17 in Schedule "D" of the Act approved April 16th, 1903, i. e., etc.

It is to be noted that all taxable real estate whilst segregated for taxation for local purposes is for the year 1915 and *until otherwise changed by law* subject to a tax of ten cents on the $100 for State school purposes.

By an act approved March 15th, 1915, Chapter 88, Act Special Session 1915, the rolling stock of electric railway corporations is assessed by the State Corporation Commission for both State and local purposes and is to be "divided, apportioned and distributed amongst the several counties, cities, towns and school districts in the State in and through which any part of any such electric railway is located, in the ratio and proportion that the total assessed value of the right of way, roadbed, track and all other property (except rolling stock) of such electric railway, corporations respectively, located in any such county, city, town or school district bears to the assessed value of all such property (except rolling stock) of said electric railway corporation respectively. The State Corporation Commission is to make such

division, apportionment and distribution and to fix the proportion subject to local taxation by the counties, cites, towns and school districts, and certify the same to the supervisors, councils, etc. The valuation of said rolling stock when so apportioned, etc., is held to be situated in said counties, cities, etc., and taxable therein in the same way and manner as the physical properties of said railroads is now taxed for purposes of local taxation.

Chapter 99, approved March 15th, 1915, authorizes the supervisors of counties and councils of cities and towns vested with authority to levy taxes, to adopt the classification of the several subjects of taxation as the same are now or hereafter may be classified for purposes of taxation by the State, and when levying taxes for their purpose are authorized to impose different rates upon one or more of such classes of property: provided, however, that no rate imposed shall exceed the maximum rate, if any, fixed by law. Of course this authority does not extend to any levy on property or taxable subjects wholly segregated for State taxation, and this chapter so expressly states.

Cities and towns seem peculiarly favored in this new legislation. By an act approved March 17th, 1915, all cities and towns are authorized to levy a tax upon all property which they are not prohibited from taxing by general law and except upon property upon which a maximum rate for local purposes is fixed by general law, to impose in addition thereto and in excess of the maximum rate of taxation which may now be imposed by each of them under any existing statute or statutes a further and additional rate of (not to exceed) twenty-five cents upon each one hundred dollars of assessed value of such property; provided, however, the council of any said city or town to which territory has heretofore been annexed, is authorized to impose the said additional levy or rate hereinbefore provided for, *any specific limitations prescribed in charter's annexation acts or proceedings and fixed by the vote of the people or otherwise to the contrary notwithstanding.* Certainly the italicized portion of this act works the gravest sort of injustice upon annexed territory, whose rights are carefully guarded by the annexation act—a right deliberately and wilfully disregarded by the passage of this act.

Careless Legislation.

We have more than once in the pages of the REGISTER commented upon the grave error committed by our Constitution makers in limiting the time of the sessions of our Legislature, or rather in so fixing the salary of the members of that body as practically to compel them to limit the length of their sessions. We have always said that such a limitation necessarily led to careless and ill-conceived legislation and if anything was needed to prove the correctness of our assertion an inspection of the last volume of the Acts would be sufficient.

The "Segregation Act," as it was called, was after long discussion and hot debate passed in February and approved by the Governor on February 16th, 1915. It was repealed and re-enacted by an Act approved March 15th, 1915.

The Act to amend §§ 8 and 9 of the Act to raise revenue, etc., approved April 16th, 1903, was passed and approved by the Governor February 18th, 1915. It was repealed and re-enacted by an Act approved March 17th, 1915.

The Act approved March 15th, 1915, assessing taxes, etc., upon banks, banking associations, etc., was in reality repealed and re-enacted by an Act approved March 18th, 1915, although the latter Act make no allusion whatever to the former Act.

The Act approved February 16th, 1915, providing for the segregation of the tax upon rolling stock of steam operated roads was repealed and re-enacted March 13th, 1915, because the word "annual" was left out in clause three.

By an Act approved February 10th, 1915, Boards of Supervisors of the counties and councils of the cities were in their discretion allowed to make an annual levy of ten cents on the one hundred dollars on the *real* and *personal* property in said counties or cities—for support, etc., of Confederate soldiers, etc. This Act has never *in terms* been repealed, but of course being inconsistent with the terms of the "Segregation Act" of March 15th, 1915, is repealed by the general repealing clause in that Act. Up to the time of writing this editorial only 240 pages of the printed Acts have been received, so there may be other "repealers." The futility of Constitutional limitations on the salary of members for an extra session is also shown by the Act approved March 15th, 1915, which in terms almost pathetic

sets out the fact that the Legislature could not do its work in the thirty days session and that the members could not afford to stay longer on the meagre one hundred dollars allowed by the Constitution *as salary,* and therefore they voted themselves an extra fifty dollars to pay their *necessary expenses* in attending the extended session. No well-thinking man begrudges them this fifty dollars, but if fifty dollars why not five hundred? And so of what use is the limit fixed by the Constitution?

We regret to notice several very apparent errors in the printed sheets, which ought to be corrected in the bound volume, unless they occur in the enrolled bills. For instance on page 122 in the important Act as to the establishment, proper construction, etc., of public roads, landings, etc., the word "when" occurs where the word "upon" is plainly meant in the fourth line of § 12, and upon page 123 in the Act regarding the correction of erroneous assessments, the word "not" is an apparent error, the word "no" being intended. So on page 146, the word "care" should be "are."

The county of Washington will have a hard time also with the Act approved March 18th, 1915, providing at great length for the working and keeping in order of their roads and allowing the Board of Supervisors to borrow money and do various other things if the Act is to be *"literally* construed to the end that its purposes may be fully carried out." The draughtsman probably put in *"liberally* construed," but it stands with a most distinct "literally."

We are afraid out Legislators did not use as much as they should have done the new Bureau they created at the regular session of 1914; i. e., the Legislative Reference Bureau.

The Unconstitutionality of § 2436a of Pollard's Code.

In the case of Curtis *v.* Hiden, decided by our Supreme Court March 11th, 1915, § 2436a of Pollard's Code is held unconstitutional as an unwarrantable interference with rights of property and denying the equal protection of the laws. This section provides as follows: "When real estate is held by a party

as tenant by the curtesy, or in dower, whether the remainder be vested or contingent, and whether the remaindermen be infants or adults, it shall be lawful for the circuit and corporation courts, or such court having jurisdiction of the subject-matter, upon a bill filed by the party holding such estate by curtesy or in dower, in which bill all persons directly or contingently interested shall be made defendants, to decree a sale of such real estate, or any part thereof, and to invest the proceeds of sale under the decree of the court for the use and benefit of the party so holding the estate, subject to the rights of the remaindermen; provided, however, that the bill of the plaintiff shall set forth the facts which, in his or her opinion, would justify the sale of the said real estate, and shall be verified by the affidavit of the party, and provided the court shall be of opinion that the interests of all parties will be promoted by such sale, and shall so certify in the decree."

The decision is one of first intention in this State and is of double interest to readers of the REGISTER, as the Court quotes from our then Editor's note to Lantz *v.* Massie, 7 VA. LAW REG., p. 544. In this note Prof. Wm. M. Lile takes the ground that the case of Gosson *v.* McFerran, 79 Ky. 236, was decided properly in holding a practically similar clause in the Kentucky Statutes unconstitutional. "The reasoning of this case," says Professor Lile, "is conclusive of the iniquity of the act so far as it authorizes the sale of vested remainders, where the vested remaindermen are adults and of sound mind."

The decision of our Court, however, leaves a doubt as to whether there may not be a state of facts which "would justify the sale of real estate," for it concludes as follows:

"Upon the whole case we are of opinion that if the statute is to be construed as conferring a right upon the life tenant by curtesy, or in dower, to demand and require a sale of the real estate in which he or she is interested where all the parties are *sui juris* and the estate is vested, then the statute is unconstitutional as an unwarrantable interference with rights of property and as denying the equal protection of the laws; that if the statute is to be regarded as merely conferring the power upon the courts to order a sale where the facts set forth would justify

the sale of real estate,' to follow the language of the statute, then the bill before us, in our judgment, makes no such case and sets forth no facts which would justify the court in ordering the sale; and, therefore, in either aspect, the judgment of the circuit court sustaining the demurrer to the bill was right and should be affirmed."

It is rather hard to imagine a state of facts which would justify such a proceeding where all the parties are *sui juris* and of age. We advise any one rash enough now to file a bill under this section, to examine "the facts" with the most careful scrutiny.

The Migratory Bird Law Held Unconstitutional.

In an editorial in the December number of the REGISTER, Vol. XIX, p. 634, we expressed the opinion that the Act of Congress known as the Migratory Bird Law, 37 U. S. Stats., pp. 828-847, was not constitutional. We find that Judge Trieber of the United States District Court for the Eastern District of Arkansas is of the same opinion. It will be remembered that the act in substance declared that birds of periodical migration, such as wild geese, wild swans, wild ducks, etc., were placed under the fostering care, custody and protection of the Federal Government and authorized regulations of the Department of Agriculture. Defendant in the case of United States *v.* Shauver, 214 Federal Reporter 154, was indicted for violation of this statute, and demurred on the ground that the statute was invalid. Judge Trieber in sustaining the demurrer held that, in view of the fact that the federal Constitution was a delegation of power from the States and that Congress had no powers other than those expressly or impliedly given by that instrument, and being unable to find any provision which he deemed adequate to authorize such legislation, the act was invalid and while recognizing the force of the contention that only by national legislation can the birds of the country be preserved, says that this is a matter not for the courts, but for the people, for they only have authority to amend their Constitution, and courts have only the power to determine whether a statute is authorized by the Constitution as it exists.

We must not be misunderstood as to our entire sympathy with the object the act attempts to carry out, but we believe the means by which this object is attempted is as dangerous as the "pot hunter" is to these birds. The States can and should regulate the matter.

"These Be Brave Words, My Masters."

Mr. Justice Oliver Wendell Holmes has now a dangerous rival on the Supreme Bench. No longer can he with the careless freedom of the cultivated Bostonese decorate and beautify the dull pages of the United States Supreme Court Reports with sesquipedalian words and sentences which the less erudite must needs ponder over with care and thought. And this rival comes from the land of broad rivers and high mountains, the grand old State of Tennessee. Mr. Justice McReynolds in the case of Gleason *v.* Harry K. Thaw, decided February 23rd, 1915, delivering the opinion of the Court in deciding that the "professional services of a lawyer were not property within the meaning of the bankrupt act," uses the following language: "The accurate delimitation of the concept 'property' would afford a theme especially apposite for amplificative philosophic disquisition."

We haven't the slightest doubt but that it would and only regret that this "disquisition" was not "amplified." But in the natural pride we of the South feel in the fact that we can now hurl against Boston's culture as exemplified by the word "ineluctible" those glorious words "amplificative philosophical disquisition," we rest content. Isn't Harry K. a disturbing element, anyway? Or is it "perturbing" element?